

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**MA VIRGINIA OJ DELAPENA, aka
MA VIRGINIA JORQUIA OJASTRO, aka
MARIA V. DELAPENA**

Registered Nurse License No. 357872

Respondent

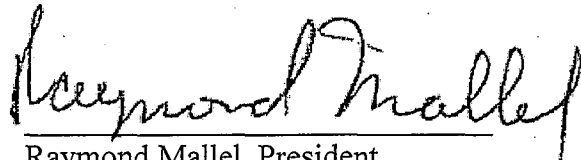
Case No. 2011-901
OAH No. L-2011060802

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **September 10, 2012.**

IT IS SO ORDERED **August 9, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LINDA L. SUN
Deputy Attorney General
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Attorneys for Complainant

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2011-901

11 **MA VIRGINIA OJ DELAPENA, AKA MA**
12 **VIRGINIA JORQUIA OJASTRO, AKA**
13 **MARIA V. DELAPENA**

OAH No. L-2011060802

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **19553 Spinning Wheel Road**
15 **Walnut, CA 91789**
Registered Nurse License No. 357872

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
22 Registered Nursing (Board). She brought this action solely in her official capacity and is
23 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
24 Linda L. Sun, Deputy Attorney General.

25 2. Respondent Ma Virginia OJ Delapena, aka Ma Virginia Jorquia Ojastro, aka Maria V.
26 Delapena (Respondent) is represented in this proceeding by attorney Samuel Spital, Esq., whose
27 address is: 8880 Rio San Diego Drive, Ste 800, San Diego, CA 92108-1642.
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3. On or about March 31, 1983, the Board issued Registered Nurse License No. 357872 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2011-901 and will expire on March 31, 2013, unless renewed.

JURISDICTION

4. Accusation No. 2011-901 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 4, 2011. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2011-901 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2011-901. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2011-901.

9. Respondent agrees that her Registered Nurse License is subject to discipline and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

10. Respondent has never been the subject of any disciplinary action. She is admitting responsibility at an early stage in the proceedings. Respondent has submitted a lengthy mitigation brief with supporting declarations and exhibits, which the Board has taken into consideration.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Registered Nursing or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions,

1 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
2 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
3 writing executed by an authorized representative of each of the parties.

4 15. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Board may, without further notice or formal proceeding, issue and enter the following
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Registered Nurse License No. 357872 issued to
9 Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation
10 for three (3) years on the following terms and conditions.

11 **Severability Clause.** Each condition of probation contained herein is a separate and
12 distinct condition. If any condition of this Order, or any application thereof, is declared
13 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
14 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
15 and enforceable to the fullest extent permitted by law.

16 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A
17 full and detailed account of any and all violations of law shall be reported by Respondent to the
18 Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
19 compliance with this condition, Respondent shall submit completed fingerprint forms and
20 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
21 as part of the licensure application process.

22 **Criminal Court Orders:** If Respondent is under criminal court orders, including
23 probation or parole, and the order is violated, this shall be deemed a violation of these probation
24 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

25 2. **Comply with the Board's Probation Program.** Respondent shall fully
26 comply with the conditions of the Probation Program established by the Board and cooperate with
27 representatives of the Board in its monitoring and investigation of the Respondent's compliance
28 with the Board's Probation Program. Respondent shall inform the Board in writing within no

1 more than 15 days of any address change and shall at all times maintain an active, current license
2 status with the Board, including during any period of suspension.

3 Upon successful completion of probation, Respondent's license shall be fully restored.

4 3. **Report in Person.** Respondent, during the period of probation, shall
5 appear in person at interviews/meetings as directed by the Board or its designated representatives.

6 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency
7 or practice as a registered nurse outside of California shall not apply toward a reduction of this
8 probation time period. Respondent's probation is tolled, if and when she resides outside of
9 California. Respondent must provide written notice to the Board within 15 days of any change of
10 residency or practice outside the state, and within 30 days prior to re-establishing residency or
11 returning to practice in this state.

12 Respondent shall provide a list of all states and territories where she has ever been licensed
13 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
14 information regarding the status of each license and any changes in such license status during the
15 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
16 license during the term of probation.

17 5. **Submit Written Reports.** Respondent, during the period of probation,
18 shall submit or cause to be submitted such written reports/declarations and verification of actions
19 under penalty of perjury, as required by the Board. These reports/declarations shall contain
20 statements relative to Respondent's compliance with all the conditions of the Board's Probation
21 Program. Respondent shall immediately execute all release of information forms as may be
22 required by the Board or its representatives.

23 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
24 state and territory in which she has a registered nurse license.

25 6. **Function as a Registered Nurse.** Respondent, during the period of
26 probation, shall engage in the practice of registered nursing in California for a minimum of 24
27 hours per week for 6 consecutive months or as determined by the Board.

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1 For purposes of compliance with the section, "engage in the practice of registered nursing"
2 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
3 non-direct patient care position that requires licensure as a registered nurse.

4 The Board may require that advanced practice nurses engage in advanced practice nursing
5 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

6 If Respondent has not complied with this condition during the probationary term, and
7 Respondent has presented sufficient documentation of her good faith efforts to comply with this
8 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
9 extension of Respondent's probation period up to one year without further hearing in order to
10 comply with this condition. During the one year extension, all original conditions of probation
11 shall apply.

12 7. **Employment Approval and Reporting Requirements.** Respondent shall
13 obtain prior approval from the Board before commencing or continuing any employment, paid or
14 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
15 performance evaluations and other employment related reports as a registered nurse upon request
16 of the Board.

17 Respondent shall provide a copy of this Decision to her employer and immediate
18 supervisors prior to commencement of any nursing or other health care related employment.

19 In addition to the above, Respondent shall notify the Board in writing within seventy-two
20 (72) hours after she obtains any nursing or other health care related employment. Respondent
21 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
22 separated, regardless of cause, from any nursing, or other health care related employment with a
23 full explanation of the circumstances surrounding the termination or separation.

24 8. **Supervision.** Respondent shall obtain prior approval from the Board
25 regarding Respondent's level of supervision and/or collaboration before commencing or
26 continuing any employment as a registered nurse, or education and training that includes patient
27 care.

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Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

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1 Respondent shall not work in any health care setting as a supervisor of registered nurses.
2 The Board may additionally restrict Respondent from supervising licensed vocational nurses
3 and/or unlicensed assistive personnel on a case-by-case basis.

4 Respondent shall not work as a faculty member in an approved school of nursing or as an
5 instructor in a Board approved continuing education program.

6 Respondent shall work only on a regularly assigned, identified and predetermined
7 worksite(s) and shall not work in a float capacity.

8 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
9 request documentation to determine whether there should be restrictions on the hours of work.

10 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
11 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
12 than six months prior to the end of her probationary term.

13 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
14 Respondent shall submit to the Board the original transcripts or certificates of completion for the
15 above required course(s). The Board shall return the original documents to Respondent after
16 photocopying them for its records.

17 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
18 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
19 amount of six thousand dollars (\$6,000.00). Respondent shall be permitted to pay these costs in a
20 payment plan approved by the Board, with payments to be completed no later than three months
21 prior to the end of the probation term.

22 If Respondent has not complied with this condition during the probationary term, and
23 Respondent has presented sufficient documentation of her good faith efforts to comply with this
24 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
25 extension of Respondent's probation period up to one year without further hearing in order to
26 comply with this condition. During the one year extension, all original conditions of probation
27 will apply.

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1 12. **Violation of Probation.** If Respondent violates the conditions of her
2 probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside
3 the stay order and impose the stayed revocation of Respondent's license.

4 If during the period of probation, an accusation or petition to revoke probation has been
5 filed against Respondent's license or the Attorney General's Office has been requested to prepare
6 an accusation or petition to revoke probation against Respondent's license, the probationary
7 period shall automatically be extended and shall not expire until the accusation or petition has
8 been acted upon by the Board.

9 13. **License Surrender.** During Respondent's term of probation, if she ceases
10 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
11 probation, Respondent may surrender her license to the Board. The Board reserves the right to
12 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
13 take any other action deemed appropriate and reasonable under the circumstances, without further
14 hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no
15 longer be subject to the conditions of probation.

16 Surrender of Respondent's license shall be considered a disciplinary action and shall
17 become a part of Respondent's license history with the Board. A registered nurse whose license
18 has been surrendered may petition the Board for reinstatement no sooner than the following
19 minimum periods from the effective date of the disciplinary decision:

20 (1) Two years for reinstatement of a license that was surrendered for any reason other
21 than a mental or physical illness; or

22 (2) One year for a license surrendered for a mental or physical illness.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Samuel Spital, Esq.. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 11/15/2011

Ma Virginia O. del Pen
MA VIRGINIA OJ DELAPENA, AKA MA
VIRGINIA JORQUIA OJASTRO, AKA MARIA V.
DELAPENA
Respondent

I have read and fully discussed with Respondent Ma Virginia OJ Delapena, aka Ma Virginia Jorquia Ojastro, aka Maria V. Delapena the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 11/21/11

Samuel Spital, Esq.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 11/22/11

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General

Linda L. Sun
LINDA L. SUN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2011-901

1 KAMALA D. HARRIS
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2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LINDA L. SUN
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Attorneys for Complainant

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8 **BEFORE THE**
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9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2011-901

12 **MA VIRGINIA OJ DELAPENA, AKA**
13 **MA VIRGINIA JORQUIA OJASTRO, AKA**
14 **MARIA V. DELAPENA**
19553 Spinning Wheel Road
Walnut, CA 91789
Registered Nurse License No. 357872

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs.

22 2. On or about March 31, 1983, the Board issued Registered Nurse License Number
23 357872 to Ma Virginia OJ Delapena, aka Ma Virginia Jorquia Ojastro, aka Maria V. Delapena
24 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
25 the charges brought herein and will expire on March 31, 2013, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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9. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

"(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

"(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

"(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

"(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

COSTS RECOVERY PROVISION

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

PATIENT C.L.

11. Respondent has been employed as a registered nurse in the Observation Treatment Center (OTC) at Kaiser Permanente, Baldwin Park, since about October 21, 2001. On or about November 27, 2005, while working the night shift from 7:00 p.m. to 7:00 a.m., Respondent admitted Patient C.L., who was 12 weeks pregnant with lower abdominal pain, to OTC from the emergency room. Admission notes written on the Progress Sheet at 2040 hours show that one of the deciding factors whether Patient C.L. needed to be sent to the operating room would be based on the patient's worsening pain. At 2155 hours, Respondent documented in the Adult Nursing Initial Assessment that Patient C.L.'s pain level was a 10 based on a 0-10 pain scale, with 10 being the maximum. Physician's order written at 2205 hours indicates an order for Morphine to be given by injection immediately. The Problem/Goal List (or commonly known as the Plan of Care) was not updated to address the patient's pain level. The Progress Sheet written at 0154 hours on November 28, 2005 shows that Code Blue was called due to Patient C.L.'s deteriorating condition. Respondent admitted she did not document all the calls made to the physician, the vital signs taken and assessment of the patient.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Incompetence)

12. Respondent is subject to disciplinary action under Code section 2761, subdivision (a)(1), in conjunction with California Code of Regulations, title 16, section 1443 for unprofessional conduct, in that from about November 27, 2005 to November 28, 2005, Respondent was incompetent in her care of Patient C.L. Complainant refers to and incorporates all the allegations contained in paragraph 11 above and paragraph 13 below, as though set forth fully.

13. Aside from her notes written at 2155 hours on November 27, 2005, Respondent failed to document further assessment and nursing care provided to Patient C.L., which included but not limited to: any calls made to the physician, the patient's pain level, health status, medical/nursing needs, treatment or services rendered, pain medication administered, and any overall care provided to the patient until a Code Blue was called at 0154 hours the next morning.

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